

**STATE OF MICHIGAN**  
**DEPARTMENT OF LABOR & ECONOMIC GROWTH**  
**OFFICE OF FINANCIAL AND INSURANCE SERVICES**

**Before the Commissioner of Financial and Insurance Services**

**In the matter of**

**XXXXX**

**Petitioner**

**File No. 85811-001**

**v**

**Blue Cross Blue Shield of Michigan**  
**Respondent**

**Issued and entered**  
**this \_28th\_ day of December 2007**  
**by Ken Ross**  
**Acting Commissioner**

**ORDER**

**I**  
**PROCEDURAL BACKGROUND**

On October 18, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* The Commissioner reviewed the material submitted and accepted the request on October 25, 2007.

The Commissioner assigned the case to an independent review organization (IRO) because it involved medical issues. The IRO provided its analysis and recommendations to the Commissioner on November 28, 2007.

**II**  
**FACTUAL BACKGROUND**

The Petitioner receives health care benefits from Blue Cross Blue Shield of Michigan (BCBSM) through the Michigan Education Special Services Association (MESSA), an underwritten group. Coverage is governed by the MESSA Choice certificate of coverage (the certificate).

The Petitioner has suffered from recurrent episodes of dizziness. Because of this she went to the XXXXX, and received a computerized dynamic posturography (CDP) test on December 14, 2006. The total charge for this test was \$340.00. BCBSM denied payment because it believes the test is experimental or investigational for treatment of the Petitioner's condition.

The Petitioner appealed BCBSM's denial. After a managerial-level conference on September 12, 2007, BCBSM did not change its decision and issued a final adverse determination dated September 28, 2007.

### **III ISSUE**

Did BCBSM properly deny coverage for the Petitioner's CDP test?

### **IV ANALYSIS**

#### **Petitioner's Argument**

The Petitioner argues that the CDP test has fulfilled criteria required of a reliable and valid test of postural stability. In her request for external review she said that the test "has been shown to enable to differentiate between subjects with normal and abnormal vestibular function as compared with the clinical standard of reference." She says she required this test because of recurrent episodes of dizziness.

The Petitioner's audiologist at XXXXX indicated that a task force study group from the American Academy of Otolaryngology determined in 1996 that the CDP test was medically appropriate for the functional evaluation of patients with balance disorders under certain conditions. He also said that a procedure code (CPT 92548) was established for the CDP test in January 1997.

The Petitioner believes that her CDP test was not experimental or investigational, is a covered benefit, and that BCBSM is required to pay for it.

### BCBSM's Argument

The certificate clearly defines “experimental or investigational” as “a service that has not been scientifically demonstrated to be as safe and effective for treatment of the patient’s condition as conventional or standard treatment.” The certificate (page 51) also says: “We do not pay for experimental or investigational drugs or services.”

BCBSM’s medical consultant indicated that the CDP test is considered investigational because the efficacy of the test has not been proven. This is reflected in BCBSM’s medical policy title “Computerized Dynamic Posturography,” which states:

The effectiveness of computerized dynamic posturography has not been determined. It does not offer any additional information or advantage over tests already in use.

BCBSM believes that it is not required to cover the Petitioner’s CDP test since it is considered investigational.

### Commissioner’s Review

The certificate sets forth the benefits that are covered. In *Section X: Exclusions and Limitations*, it says (pages 48-49):

The following exclusions and limitations apply to the MESSA Choices program. These are in addition to limitations appearing elsewhere in this coverage booklet.

\* \* \*

- Services and supplies that are not medically necessary according to accepted standards of medical practice including any services which are experimental or investigational.

A procedure that is not the standard of care and has not been demonstrated to be as safe and effective conventional or standard treatment is considered to be investigational or experimental and is not a covered benefit under the terms of the Petitioner’s coverage.

The question of whether the Petitioner’s CDP test was experimental or investigational for treatment of the Petitioner’s condition was presented to an IRO for analysis as required by section

11(6) of PRIRA, MCL 550.1911(6). The IRO physician reviewer is board certified in otolaryngology, holds an academic appointment, and has been in practice for more than ten years.

The IRO reviewer said that “a review of the literature does not support the use of the computerized dynamic posturography as a basic diagnostic tool for evaluation of balance disorders.” There was no evidence that the Petitioner was evaluated by standard vestibular testing, and no evidence the Petitioner is undergoing rehabilitation for her condition. The IRO reviewer opined that CDP is not the standard of care in routine balance testing and concluded that the CDP the Petitioner received on December 14, 2006, was investigational for diagnosis and treatment of her condition.

While the Commissioner is not required in all instances to accept the IRO’s recommendation, it is afforded deference by the Commissioner. In a decision to uphold or reverse an adverse determination, the Commissioner must cite “the principal reason or reasons why the Commissioner did not follow the assigned independent review organization’s recommendation.” MCL 550.1911(16)(b). The IRO reviewer’s analysis is based on extensive expertise and professional judgment. The Commissioner can discern no reason why that judgment should be rejected in the present case.

Therefore, the Commissioner accepts the findings of the IRO that the CDP test the Petitioner received was investigational.

## **V ORDER**

Respondent BCBSM’s September 28, 2007, final adverse determination is upheld. BCBSM is not required to cover the Petitioner’s CDP test provided on December 14, 2006, since it is considered to be investigational for treatment of her condition.

Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered

person resides or the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.